

Remarks/Arguments

Claims 15 to 22 are pending. Claims 15 and 17 to 22 have been amended.

Entry of the amendments to the claims is requested. The amended claims are believed to be allowable. The claim amendments are believed to not involve new matter. A new search should not be required by the claim amendments. The claim amendments should only require minimal reconsideration.

The Office Action stated: that the objections to the specification, abstract and Claim 1 of record in paper no. 5, pages 2 to 4, paragraphs 1 to 5, have been withdrawn due to applicants' amendment and arguments in paper no. 7; and that applicants' arguments regarding the objections to the abstract, specification, and Claim 1 have been considered but are moot since the objections have been withdrawn. Applicants thank the Examiner for indicating withdrawal of such objections.

The Office Action stated: that the 35 U.S.C. 112 rejections of Claims 1 to 14 of record in paper no. 5, pages 4 to 9, paragraphs 6 to 7, have been withdrawn due to applicants' amendment and arguments in paper no. 7; and that applicants' arguments regarding the 35 U.S.C. 112 rejections of Claims 1 to 14 have been considered but are moot since the rejections have been withdrawn. Applicants thank the Examiner for indicating withdrawal of such rejections.

The Office Action stated: that the 35 U.S.C. 102 rejection of Claims 1 to 3, 5 and 8 to 14 as anticipated by Boswell of record in paper no. 5, pages 10 and 11, paragraph 8, has been withdrawn due to applicants' amendment in paper no.

7; and that applicants' arguments regarding the 35 U.S.C. 102 rejection of Claims 1 to 3, 5 and 8 to 12 as anticipated over Boswell has been considered but are moot since the rejection has been withdrawn. Applicants thank the Examiner for indicating withdrawal of such rejection.

The Office Action stated: that the 35 U.S.C. 103 rejection of Claims 6, 7, 13 and 14 over Boswell in view of Sander of record in paper no. 5, pages 12 and 13, paragraph 9, has been withdrawn due to applicants' amendment in paper no. 7; and that applicants' arguments regarding the 35 U.S.C. 103 rejection of Claims 6, 7, 13 and 14 over Boswell in view of Sander has been considered but are moot since the rejection has been withdrawn. Applicants thank the Examiner for indicating withdrawal of such rejection.

The Office Action stated: that the 35 U.S.C. 103 rejection of Claim 4 over Boswell in view of Curiel of record in paper no. 5, pages 13 and 14, paragraph 10, has been withdrawn due to applicants' amendment in Paper No. 7; and that applicants' arguments regarding the 35 U.S.C. 103 rejection of Claim 4 over Boswell in view of Curiel have been considered but are moot since the rejection has been withdrawn.

Claim 15 has been objected to because of the following informalities: Claims must be written as one sentence and there is a period that must be removed in line 15 of Claim 15. The Office Action stated that appropriate correction is required. This matter in Claim 15 has been corrected.

This objection should be withdrawn.

Claims 15 to 22 have been rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention.

The Office Action stated: that Claim 15 recited the limitation "the embossed design" in line 16; and that there is insufficient antecedent basis for this limitation in the claim. Antecedent basis has been supplied.

The Office Action stated that also regarding Claim 15 it is not understood if the limitations starting on line 16 are also optional following line 14 or if the limitations are referring to non-optional language ending at line 10. Claim 15 has been clarified.

This rejection should be withdrawn.

Independent Claim 15 has been amended to recite that functional layer (A) is a non-adhesive functional layer [or, the outermost functional layer (A) is a non-adhesive functional layer]. Support for functional layer (A) being a non-adhesive layer is inherent from applicants' disclosure.

Claim 15 is drawn to a tube packaging laminate. Function layer (A) faces inward when the tube packaging laminate is in tube form. When the tube packaging laminate, in tube form, is empty before use, functional layer (A) faces itself on the inside of the tube. If it was an adhesive layer, it would bind to itself when two portions of it were to contact thereby rendering it useless (as no content could be inserted). When an item, in whatever solid form (one piece, particles, etc.), was inserted into such tube packaging, the item would stick to functional layer (A) thereby possibly ruining the surface of the item and making it

very difficult to separate and remove the item from the packaging. Also, the adhesive inner surface would make it difficult to fully insert an item into the tube packaging as the item would tend to stick to the side of the tube package as it was being inserted.

One purpose of applicants' invention is to provide tube packaging for items. Use of an adhesive layer as the inner functional layer (A) of the tube packaging would essentially prevent applicants' laminate material from being used as such tube packaging. Thus, inherently applicants' disclosure supports functional layer (A) being a non-adhesive functional layer.

Applicants' specification states:

"When in the form of packaging made from the said packaging material, the functional layers on the free side of the metal foil or metallized plastic face the inside of the packaging, i.e., towards the contents of the packaging....the innermost layer, facing the contents of the packaging,...." [Page 4, lines 5 to 10]

"If a tube or at least the pipe part of a tube is made from the packaging material 9, then the film 14 faces the inside of the tube and hence the contents." [Page 6, lines 11 to 13]

It is also inherent in applicants' disclosure that its outer facing layer is a non-adhesive layer. Applicants' tube packaging is used as separate packages for goods therein. If the outer facing layer was an adhesive layer, the separate packages would stick to each other, stick to any surface, etc., and would thereby destroy applicants' invention.

Claims 15, 16 and 22 have been rejected under 35 U.S.C. 102(b) as being anticipated by Bussard (U.S. Patent No. 5,455,129). Applicants traverse this rejection.

The Office Action stated that Bussard anticipates a packaging laminate having an appearance similar to a hologram, and the tube packaging laminate is a multilayered material having a layer structure consisting of one or more functional layers of plastic, in this case an adhesive layer is the functional layer (reference number 6, Figures 1 and 2 and abstract). The (inner-facing) functional layer used by applicants' tube packaging laminate is a non-adhesive layer, therefore Bussard does not anticipate (or even suggest) applicants' claimed tube packaging laminate.

The Office Action stated: that a metal foil (reference number 4, Figures 1 or 2 and col. 6) embossed over the whole or part of the surface is arranged on the functional layer; a layer of a lacquer coating is arranged thereon the metal foil (col. 6, lines 25 to 40); a film containing a polyolefin (reference number 2, Figures 1 and 2) is arranged on the lacquer coating (col. 6, lines 25 to 40); that the embossed design is a damask pattern or a small worm design (Figures 1 or 2); that the film containing a polyolefin is transparent and formed from polyethylene or polypropylene forms the outer-lying layer has a thickness between 75 and 200 micrometers (col. 5, lines 40 to 47); and that the surface of the functional layer away from the embossed metal is plane (Figures 1 or 2), and the surface of the lacquer coating away from the metal foil plane except for recesses for optional patterns. This information does not provide anticipation.

The Office Action stated that, when the laminate is used on porcelain cups (col. 4, lines 65 to 67), the laminate is tube packaging because the cup is tube packaging and the laminate includes the substrate the laminate is attached to. Bussard only discloses the use of a (bottom) functional layer that is an adhesive layer, so Bussard does not anticipate any of applicants' claims.

Bussard requires an adhesive bottom layer that is attached to a metallic backing on an embossed plastic carrier. Bussard uses its adhesive bottom layer to a water permeable or impervious substrate. As explained above, applicants' claimed invention uses a non-adhesive bottom (functional) layer.

The Examiner has referred to Bussard's attachment of its holographic material to a porcelain cup to show its holographic material in tube form. Bussard does not say that its holographic material goes entirely around the porcelain cup, so the Examiner has not factually shown that Bussard shows its holographic material in tube form. Bussard also does not say that one end of its holographic material is in contact with or bonded to its other end, which would be necessary for Bussard's holographic material to be in tube form. Bussard refers to license plates in the same sentence as porcelain cups. It does not seem to be realistic that a holographic material would be used to cover the entire face of a license plate – the cost would be prohibitive and interfere with the necessary indicia, etc., thereon. This goes to showing that Bussard only was referring to covering parts of the surface of a porcelain cup for design purposes.

This rejection should be withdrawn.

Claims 17 to 21 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Bussard (U.S. Patent No. 5,455,129). Applicants traverse this rejection.

The Office Action stated that Bussard teaches a packaging laminate having an appearance similar to a hologram, and the tube packaging laminate is a multilayered material having a layer structure consisting of one or more functional layers of plastic, in this case an adhesive layer is the functional layer (reference number 6, Figures 1 or 2 and abstract). This statement is in error factually because the use of the term “consisting of” excludes the central metallic backing (on the embossed plastic carrier) used in some of the embodiments of Bussard.

Bussard requires an adhesive bottom layer that is attached to a metallic backing on an embossed plastic carrier. Applicants’ claimed invention uses a non-adhesive bottom (functional) layer. Bussard directs one ordinarily skilled in the art away from applicants’ claimed invention.

Regarding applicants’ invention, functional layer (A) of the tube packaging laminate faces inward when the tube packaging laminate is in tube form. When the tube packaging laminate, in tube form, is empty before use, functional layer (A) faces itself on the inside of the tube. If it was an adhesive layer, it would bind to itself when two portions of it were to contact thereby rendering it useless (as no content could be inserted). When an item, in whatever solid form (one piece, particles, etc.), was inserted into such tube packaging, the item would stick to functional layer (A) thereby possibly ruining the surface of the item and making it

very difficult to separate and remove the item from the packaging. Also, the adhesive inner surface would make it difficult to fully insert an item onto the tube packaging as the item would tend to stick to the side of the tube packaging as it was being inserted.

Use of any adhesive layer as the inner functional layer (A) of the tube packaging would essentially prevent applicants' laminate material from being used as such tube packaging. Thus, Bussard's approach would destroy applicants' invention. Changing the inner adhesive layer of Bussard to a non-adhesive layer would destroy the Bussard invention.

The Office Action stated: that a metal foil (reference number 4, Figures 1 or 2 and col. 6) embossed over the whole or part of the surface is arranged on the functional layer; that a layer of a lacquer coating is arranged thereon the metal foil (col. 6, lines 25 to 40); that a film containing a polyolefin (reference number 2, Figure 1 or 2) is arranged on the lacquer coating (col. 6, 1.25-40); the embossed design is a damask pattern or a small worm design (Figures 1 or 2); that the film containing a polyolefin is transparent and formed from polyethylene or polypropylene forms the outer-lying layer and has a thickness between 75 and 200 micrometers (col. 5, lines 40 to 47); that the surface of the functional layer away from the embossed metal is plane (Figures 1 or 2), and the surface of the lacquer coating away from the metal foil is plane except for recesses for optional patterns; and that the metal foil is an aluminum foil (col. 6, lines 27 and 28). This information does not make applicants' claimed invention as a whole obvious to one ordinarily skilled in the art.

The Office Action stated, that when the laminate is used on porcelain cups (col. 4, lines 65 to 67) the laminate is tube packaging because the cup is tube packaging and the laminate includes the substrate the laminate is attached to. As shown above, Bussard does not teach the use of its holograph material in tube form in conjunction with porcelain cups.

The Office Action stated that Bussard fails to explicitly teach a lacquer coating between the functional layer and aluminum foil layer, a functional layer made from polyethylene, or the thickness of a functional layer, lacquer coating or aluminum foil layer. The Examiner's attempt to show that it is obvious to supply these items is sheer speculation. Section 103(a) requires facts in the record.

The Office Action stated: that however, Bussard teaches that additional layers of various materials are also commonly found in these holographic products, such as different placements of lacquer coatings or another polyolefin layer between the metal foil and the adhesive layer (col. 6, lines 30 to 40); that, also, the adhesive layer can be chosen based on the character of the two surfaces to be bound to each other, the circumstances under which the bonding is to be accomplished and the intended use of the resulting products (col. 6, lines 3 to 8); that, furthermore, adding duplicate layers of lacquer or polyethylene film to a laminate for the same purpose, as the original film is obvious to one having ordinary skill in the art, absent the showing of unexpected result or advantage of the duplicate layers; and that Bussard teaches that the lacquer and metal layers are thin layers and that one of the plastic layers is between 75 and 200

micrometers (col. 6, lines 15 to 40). The burden of proof is on the Examiner and speculation does not carry such burden of proof.

The Office Action stated that one of ordinary skill in the art would have recognized that the optimum thickness for the layers of the laminate would be determined through routine experimentation depending on the intended end result of the laminate. This is a classic example of speculation. So-called routine experimentation does not satisfy or comply with the requirements of the Graham decision.

The Office Action stated that, furthermore, in the Figures 1 and 2 it is obvious that the functional layer or layers has a similar thickness to the film containing a polyolefin and the metal lacquer layers are very thin layers compared to the plastic layers. Figures 1 and 2 each only show one layer in each of "an embossed plastic carrier 2" [Emphasis supplied] and of "an adhesive layer 6" [Emphasis supplied].

The Examiner has not factually in the record established a *prima facie* showing of obviousness.

The Office Action stated that, therefore, it would have been obvious to one having ordinary skill in the art at the time the applicants' invention was made to add a duplicate lacquer and functional polyethylene layer, in order to increase the functionality of the original lacquer and polyethylene layers or create the adhesive from polyethylene, in order to adhere to an intended substrate, as taught by Bussard. Applicants point out that this statement is speculation and even does not deal with applicants' claimed invention.

The Office Action stated that it would have also been obvious to one having ordinary skill in the art to select the thickness of the layers within the ranges claimed, because Bussard teaches that the polyethylene film has a thickness between 20 and 200 micrometers, and that the functional layer has a similar thickness while the lacquer and metal layers are much thinner as taught in columns 6 and Figures 1 and 2. This statement is also only speculation.

This rejection should be withdrawn.

Reconsideration, reexamination and allowance of the claims are requested.

Respectfully submitted,

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